

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

KATHERINE REYNOLDS,

Plaintiff,

v.

Civil Action No. 3:09cv238

RELIABLE TRANSMISSIONS, INC., et al.,

Defendants.

DECLARATION OF LEONARD A. BENNETT

I, LEONARD A. BENNETT, declare:

1. My name is Leonard A. Bennett. I am over 21 years of age, of sound mind, capable of executing this declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

2. Three attorneys from my law firm – myself, Robin Abbott and Gary Abbott – have acted in the above action as counsel for the Plaintiff. Our law firm, Consumer Litigation Associates, P.C., is located at 12515 Warwick Boulevard, Suite 100, Newport News, Virginia 23606.

3. Since 1994, I have been and presently am a member in good standing of the Bar of the highest court of the State of Virginia, where I regularly practice law. Since 1995, I have been and presently am a member in good standing of the Bar of the highest court of the State of North Carolina. I have also been admitted to practice before and am presently a member in good standing of the Bars of the following federal courts:

United States Supreme Court

United States Court of Appeals for the

Fourth Circuit
Third Circuit
Ninth Circuit

United States District Court for the
Eastern District of Virginia
Western District of Virginia
Eastern District of North Carolina
Middle District of North Carolina
Western District of North Carolina
District of Wisconsin
Eastern District of Michigan
Northern District of Illinois

4. I have been admitted pro hac vice in jurisdictions across the country including by example only: California, Alabama, Texas, Florida, Rhode Island, Hawaii, New Hampshire, Connecticut, Ohio, South Carolina, Pennsylvania, Arizona, Washington and Maryland. I have never been denied admission *pro hac vice*.

5. For over a decade, my practice has been limited to consumer protection litigation. While my experience representing consumers has come within several areas, my most developed area of expertise is in plaintiff's litigation under the federal statutes that are designated under the Federal Consumer Credit Protection Act, 15 U.S.C. §1600, et seq. Most of my professional accomplishments have come in this field.

6. I am currently on the Board of Directors of the National Association of Consumer Advocates. I am on the Partners Council for the National Consumer Law Center. These are the two most significant consumer advocacy organizations in the United States.

7. In 2003, I was invited to and did present the Congressional Testimony of the National Association of Consumer Advocates before the House Committee on Financial Services, Fair Credit Reporting Act: How it Functions for Consumers and the Economy, June 4, 2003, Proposed Amendments to the Federal Fair Credit Reporting Act,

<http://financialservices.house.gov/media/pdf/060403lb.pdf>. I was again invited to present testimony before the House Financial Services Committee and did so in June 2007 http://www.naca.net/_assets/shared/633201869867878750.pdf and then again on the Credit Repair Organizations Act in May 2008.

8. Since 2001, I have been asked to and did speak at numerous seminars and events in the area of Fair Credit Reporting and Identity Theft, or in the broader area of Consumer Protection litigation. These included the following:

2009

National Consumer Law Center, National Consumer Rights Conference, Philadelphia, PA, Multiple Sessions, Fair Credit Reporting Act, October 2009;

Virginia State Bar CLE, Updates in Consumer Finance Litigation, September 2009;

National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, Chicago, Illinois, May 2009,
Multiple Panels;

2008

Washington State Bar, Consumer Law CLE, Invited Speaker, September, 2008
Fair Credit Reporting Act

U.S. Army JAG School, Charlottesville, Virginia, Course Instructor, May, 2008
Fair Credit Reporting Act

Testify before House Financial Services Committee, May, 2008
Credit Repair Organization Act

Norfolk-Portsmouth Bar Association, April, 2008, Bench-Bar Presentation
Fair Debt Collection Practices Act

National Consumer Law Center, National Consumer Rights Conference, Nashville, TN, Speaker for Multiple Sessions, *Fair Debt Collection Practices Act, March, 2008*

2007

Washington State Bar, Consumer Law CLE, Invited Speaker, July 2007

Fair Credit Reporting Act.

Invited to testify before House Financial Services Committee, June 2007
Fair Credit Reporting Act.

National Association of Consumer Advocates, Fair Credit Reporting Act National Conference,
Denver, Colorado, May 2007,
Multiple Panels;

U.S. Army JAG School, Charlottesville, Virginia, Course Instructor, May 2007
Fair Credit Reporting Act.

Georgia State Bar, Consumer Law CLE, Speaker, March 2007
Fair Credit Reporting Act.

2006

Contributing Author, Fair Credit Reporting Act, Sixth Edition, National Consumer Law Center,
2006.

National Consumer Law Center, National Consumer Rights Conference, Miami, FL, Speaker for
Multiple Sessions, Fair Credit Reporting Act, November 2006

Texas State Bar, Consumer Law CLE, Speaker, October 2006
Federal Claims in Auto Fraud Litigation

Santa Clara University Law School, Course, March 2006
Fair Credit Reporting Act.

Widener University Law School, Course, March 2006
Fair Credit Reporting Act.

United States Navy, Navy Legal Services, Norfolk, Virginia, April 2006
Auto Fraud;

2005

Missouri State Bar CLE, Oklahoma City, Oklahoma,
Fair Credit Reporting Act;

National Consumer Law Center, National Consumer Rights Conference, Boston, Mass.
Fair Credit Reporting Act Experts Panel; and
ABC's of the Fair Credit Reporting Act.

National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, New Orleans, Louisiana (May 2005),
Multiple Panels;

United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island,
Consumer Law.

2004

American Bar Association, Telephone Seminar;
“Changing Faces of Consumer Law”,

National Consumer Law Center, National Consumer Rights Conference, Boston, Mass.
Fair Credit Reporting Act Experts Panel; and
ABC’s of the Fair Credit Reporting Act.

National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, Chicago, Illinois;
Multiple Panels

Oklahoma State Bar CLE, Oklahoma City, Oklahoma,
Identity Theft;

Virginia State Bar, Telephone Seminar,
Identity Theft;

United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island,
Consumer Law

United States Navy, Navy Legal Services, Norfolk, Virginia,
Auto Fraud;

Virginia State Bar, Richmond and Fairfax, Virginia,
Consumer Protection Law;

Michigan State Bar, Consumer Law Section, Ann Arbor, Michigan;
Keynote Speaker.

9. I was admitted in the Eastern District of Virginia in 1994, the year I also tried my first federal case as lead counsel. Since then, I have litigated approximately 500 federal cases, on a class or individual basis, most of these as lead counsel. I have appeared before District Courts in over a dozen states, and at least twenty districts. All but a handful of these cases have been prosecuted

under federal consumer protection laws. As of the date of this Declaration, I have lost less than one percent of these cases to a dispositive motion.

10. In 2007 I was selected to the Law Dragon Top 500 Plaintiffs Attorneys in the Nation. In 2010 I was selected to the Law Dragon Top 3,000 Attorneys in the Nation (all attorneys, not simply Plaintiff's). In 2009 I was selected as a Virginia Leaders in the Law through the Virginia Lawyers Weekly based on my “[n]ationally recognized expertise in consumer protection law.” In 2010 I was selected as a Virginia Super Lawyer.

11. The success and depth of experience in my federal practice was recently the subject of an article in the Virginia Lawyers Weekly. In same, Alan Wingfield, a frequent defense opponent was cited: “Alan D. Wingfield, a Richmond attorney often on the other side from Bennett in FCRA cases, notes that Bennett filed more than 450 cases in federal court in the last decade, or almost four times as many as any other lawyer.” (emphasis added).

<http://valawyersweekly.com/blog/2010/04/19/consumer-law-world-of-its-own-in-richmond-court/>.

13. Consumer protection litigation is correctly described by Mr. Wingfield in the above Lawyers Weekly article when he stated, “ ‘It’s a specialized area, and it requires knowing what you’re doing,’ Wingfield said. The statutes have quirks not familiar to attorneys who practice in other areas of the law, and the case law is developing rapidly. ‘It’s developed into a world of its own,’ he said.” *Id.* I have frequently surveyed the state of the dockets in Virginia’s federal district courts to track filings and litigation of other attorneys representing consumers. I believe that I can competently testify regarding the number and experience level of the attorneys in Virginia who practice in consumer protection law. There are less than a handful of attorneys who do so and who have more than very limited trial or federal litigation experience.

14. I have also litigated an extensive docket nationally. I am familiar with the number and identity of attorneys in other parts of the country who practice in this field. There are a very limited number of such practitioners and fewer still willing to litigate within the Eastern District of Virginia. I estimate that there are less than ten private attorneys nationally who have significant experience litigating the provisions of the Equal Credit Opportunity Act and the Fair Credit Reporting Act at issue in this case.

15. Nearly all of the attorney's fees earned by myself and my law firm are on a contingency fee basis. We do not get paid unless we recover for our clients. It is also nearly always necessary for us to advance costs in these federal consumer cases, which can sometimes require risks of tens of thousands of dollars in addition to fees. If we were unable to recover a contingency premium in our cases, our law firm could not continue to practice by accepting contingency-only work.

16. My standard hourly rate is \$450.00 per hour. This is the rate I charge most clients for representation in litigation matters and it is included in many of the retainer agreements that I transact with my clients as a baseline rate. This rate has been approved by two courts in this District. Though I have had only one non-contingency case since setting, this is the rate I charged in that matter.

17. Outside of Virginia, the hourly rates for which consumer attorneys such as myself and the other lawyers in my firm have been expected to bill have been considerably higher than my Virginia hourly. In fact, in some of my co-counsel relationships, the hourly rate disparity have been an obstacle to such relationships and it became necessary for me to bill at rates significantly higher than \$450. I estimate that the average hourly rate in my field in litigation in *national* litigation, for my experience and expertise is easily over \$600.

18. I have specific knowledge as to hourly rates charged and approved in this District and Division and am comfortable stating that the average hourly rates for federal litigation attorneys in this District and Division range between \$300 and \$600, depending upon the market targeted by the law firm (e.g. insurance defense is paid at rates at the low ends of this range, while specialized consumer credit defense attorneys at national firms are paid towards the higher end). Ten years ago, even five years ago, an hourly rate of \$450, even for the attorney with the largest civil docket in this District, may have seemed high. Today, it is low. As of December 2005, at *McGuire Woods*, a large Richmond firm, the hourly rates for partners ranged between \$260 and \$675, and for associates, between \$180 and \$375. (*12/12/2005 NLJ*. S2, Col. 1, p. 16). National Law Journal's 2009 Billing Rate Survey, December 7, 2009 listed the following sample rates for law firms that have defended consumer credit protection cases in this District and Division:

Bowman and Brooke	Partner rates: \$250-500;
Kilpatrick Stockton	Partner rates: \$375-700, Average \$515
Nixon Peabody	Partner rates: \$465-865, Average \$583
Ogletree Deakins Nash Smoak	Partner rates: \$400-625
Venable	Partner rates: \$420-975, Average \$556
Williams Mullen	Partner rates: \$315-710, Average \$417.

In 2008, Reed Smith, with whom we have litigated Richmond Division cases reported hourly rates as follows:

Partner rates: \$375-900, Average \$626

While attorneys from these law firms have proven to be skilled opponents, these rates are also an appropriate range for the comparable work that is performed by Mr. Pittman in federal litigation.

19. McGuire Woods LLP is a regular defense opponent in consumer credit cases such as these. I have also litigated against McGuire Woods partner David Hartsell, the attorney who commenced the collection action detailed in Exhibit "A" for his fees incurred in defending a debt collector in multiple consumer credit protection cases. The McGuire Woods retainer agreement attached to the complaint in the subject Illinois state court action provided for non-contingency defense counsel rates in 2006 of \$440 for Mr. Hartsell and a range of \$225 to \$355 for less experienced attorneys assisting him. Exhibit "A" Complaint and Retainer Agreement, *McGuireWoods LLP v. Riscuity, Inc.*, May 18, 2010.

20. Additionally, I am confident that my experience level by various metrics – number of federal cases litigated; number of consumer credit protection jury trials; national reputation measured by CLE teaching requests; recognition in the practice – would place me in the top 5% of consumer attorneys practicing consumer protection law in the Mid-Atlantic region. In the most recent United States Consumer Law Attorney Fee Survey for the Atlantic Region, the median hourly rate for attorneys in the top 5% was \$475. In last years survey this rate was even higher.

United States Consumer Law Attorney Fee Survey 2008-2009, 2nd Edition, 2010, Atlantic Region, p.15 last viewed at

http://www.consumerlaw.org/feesurvey/content/Atty_Fee_Survey_2008-9_Atlantic.pdf on May 27 2010.

21. In addition to the hourly rate I charge in my Eastern District of Virginia cases - \$450 per hour – my partner Robin Abbot charges an hourly rate of \$350 and our associate Gary Abbott charges a rate of \$275. Robin is recognized as well in the field of consumer protection litigation and has been asked to speak at multiple national legal conferences. She has actively litigated as many federal consumer credit cases in this District over the last several years as all but a handful of attorneys. Gary has become an important part of our litigation practice, successfully handling significant as well as routine briefing and discovery assignments.

22. The average hourly rate for all consumer protection attorneys in the Atlantic region is \$343. *United States Consumer Law Attorney Fee Survey 2008-2009, 2nd Edition, 2010, Atlantic Region,* p.14 last viewed at
http://www.consumerlaw.org/feesurvey/content/Atty_Fee_Survey_2008-9_Atlantic.pdf on May 27 2010. The median hourly rate for the least experienced (or lowest priced) consumer attorneys in the region (bottom 25%) was \$245 and last year was \$275. *Id.* Robin Abbott is definitely in the top half – above average – of the limited number of attorneys able to practice as consumer law specialists in this region, and most likely in the top 25%. Gary Abbott is definitely in the top 75% of such attorneys. Their hourly rates fit well within these survey results.

23. I am the lead partner at Consumer Litigation Associates and together with co-counsel Robin Abbott I have overseen the work performed in this case. I am familiar with the time

records and the work performed in this case. The spreadsheet attached hereto is a list and categorization of most of the attorney time incurred in prosecuting this case. This is the format that has been ordered by Judge Payne in two cases since early 2008.

24. The total hours incurred by each attorney are as follows:

Leonard Bennett 13.00 hours

Robin Abbott 45.75 hours

Gary Abbott 39.00

25. The total billable time in this case exceeds \$32,500.00.

26. Our law firm has also advanced for the Plaintiff the following costs, totaling \$574.00:

Filing Fees \$ 350.00

Service of Process \$ 24.00

Expert Witness Fees \$ 200.00

I declare under penalty of perjury of the laws of the United States that the foregoing is correct.

Signed this 28th day of May 2010.

/s/

Leonard A. Bennett

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